

# RIGHTS OF CITIZENS AND FOREIGN INVESTORS TO AGRICULTURAL LAND UNDER THE LAND POLICY AND LAWS OF ETHIOPIA

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## I. Introduction

Foreign Direct Investment (“FDI”) in Ethiopian agriculture has increased significantly in the last few years. This is attributable to the increasing interest of transnational companies in land investments, as well as the investor-friendly environment developed by the Ethiopian government through multiple reviews of national policy and legal frameworks.<sup>1</sup> The flow of investment and the acquisition of land by foreign investors pose both opportunities and threats for the country; hence, it is important for the Ethiopian government to devise and implement policy frameworks that maximize the opportunities and minimize the risks. This article aims to critically analyze the effectiveness of Ethiopia’s land and investment laws in safeguarding rural communities from the risks of agricultural FDI, with special attention to the increasing demand of transnational companies to invest in farmlands of developing countries.

## II. Background to the Growing Demand for Land in Africa by Outside Investors

In the past few years, FDI in agricultural land of developing countries in general, and African countries in particular, has grown significantly.<sup>2</sup> In the period between 2005 and 2007, the overall yearly flow of FDI in Africa increased by nearly 80 percent, from US\$29 billion to US\$53 billion.<sup>3</sup> In Ethiopia, FDI in the agricultural sector alone increased by around 600

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1. LUCIE WEISSLEDER, ECOFAIR TRADE DIALOGUE DISCUSSION PAPER No. 12, FOREIGN DIRECT INVESTMENT IN THE AGRICULTURAL SECTOR IN ETHIOPIA 10-18 (2009), *available at* [http://www.boell.de/downloads/ecology/FDIs\\_Ethiopia\\_15\\_10\\_09\\_c\\_1.pdf](http://www.boell.de/downloads/ecology/FDIs_Ethiopia_15_10_09_c_1.pdf).

2. GRAIN, BRIEFING, SEIZED: THE 2008 LAND GRAB FOR FOOD AND FINANCIAL SECURITY 2 (2008), *available at* [www.grain.org/a/93](http://www.grain.org/a/93).

3. WEISSLEDER, *supra* note 1, at 4.

percent between 2005 and 2008, reaching up to US\$3.5 billion per year.<sup>4</sup> The global food and financial crises of 2008 contributed heavily to the rise in FDI in agricultural land of developing countries.<sup>5</sup> The food crisis<sup>6</sup> precipitated this sort of investment by triggering “food security” concerns in net food importing countries,<sup>7</sup> motivating them to invest in other countries’ farmlands with the objective of outsourcing their domestic food production.<sup>8</sup> The financial crisis, together with the expected increased value of food and land, encouraged agricultural FDI by broadening investors’ chances of making big profits out of such investments.<sup>9</sup>

The governments of many African countries have been welcoming foreign investors interested in their agricultural lands.<sup>10</sup> Some African countries are even working hard to attract more FDI into the sector and to try to satisfy foreign investors’ demand for fertile agricultural land.<sup>11</sup> Ethiopia, for instance, has set policy frameworks to facilitate the creation of an investment-friendly environment in the country, providing incentives<sup>12</sup>

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4. *Id.* at 10.

5. GRAIN, *supra* note 2, at 2-9.

6. When food prices increased in 2007/8, twenty-five food exporting countries put bans or restrictions on food exports so as to safeguard food security at home, exposing the vulnerabilities of food importing countries. *See* CARIN SMALLER & HOWARD MANN, INT’L INST. FOR SUSTAINABLE DEVELOPMENT, A THIRST FOR DISTANT LANDS: FOREIGN INVESTMENT IN AGRICULTURAL LAND AND WATER 4 (2009), [http://www.iisd.org/pdf/2009/thirst\\_for\\_distant\\_land.pdf](http://www.iisd.org/pdf/2009/thirst_for_distant_land.pdf).

7. Food importing countries include Bahrain, China, Egypt, India, Japan, Jordan, Kuwait, Libya, Malaysia, Qatar, South Korea, Saudi Arabia, and the United Arab Emirates. GRAIN, *supra* note 2, at 3.

8. *Id.* at 2.

9. *Id.* at 7-9.

10. “According to media reports, Sudan, Ethiopia, Madagascar, and Mozambique are among the key recipients of FDI in land in Africa.” LORENZO COTULA ET AL., LAND GRAB OR DEVELOPMENT OPPORTUNITY? AGRICULTURAL INVESTMENT AND INTERNATIONAL LAND DEALS IN AFRICA 34 (2009), *available at* [http://www.ifad.org/pub/land/land\\_grab.pdf](http://www.ifad.org/pub/land/land_grab.pdf).

11. DAVID HALLAM, INTERNATIONAL INVESTMENTS IN AGRICULTURAL PRODUCTION 4 (2009), <ftp://ftp.fao.org/docrep/fao/012/ak976e/ak976e00.pdf>.

12. Ethiopia has granted a five-year income tax exemption to all investors who engage in the production of agricultural products and export at least half (or supply 75 percent of their products to an exporter), extendable for up to seven years by the Investment Board “under special circumstances,” or even longer upon the decision of the Council of Ministers. An investor who exports less than 50 percent of his products is exempted from paying income tax for two years, extendable by five years. The government also frees such investors from paying customs duties while importing capital goods and construction materials that are necessary for establishing or upgrading their enterprises. Investors are allowed duty-free importation of spare parts and vehicles to be determined by the Investment Board depending on the type and nature of the investment. Council of Ministers Regulation to Amend the Investment Incentives and Investment Areas Reserved for Domestic Investors Reg. No. 146/2008, FEDERAL NEGARIT GAZETA, arts. 4, 5, 6, 8, 9.

and adopting mechanisms that enable foreign investors to easily lease agricultural land.<sup>13</sup>

The increased flow of agricultural FDI to African countries means that foreign investors' control of the continent's agricultural lands is also increasing. For example, over the period 2004-2009, foreign investors acquired a total of 2.49 million hectares<sup>14</sup> of agricultural lands in five sub-Saharan African countries: Ethiopia, Ghana, Madagascar, Mali, and Sudan. Of these, 602,760 hectares were in Ethiopia.<sup>15</sup> A study by Dessalegn Rahmato also indicates that close to a million hectares of Ethiopian land was transferred to foreign investors over the period 2003-2009, with an additional 500,000 hectares in the 2009-2010 period.<sup>16</sup>

GRAIN, a nongovernmental organization, describes the escalating acquisition of large-scale agricultural lands by foreigners, mainly in food-poor developing countries, as "land-grabbing."<sup>17</sup> Such acquisitions are also sometimes described as "water grabs" when land is purchased or leased in order to obtain the water rights that come with it under domestic law or under the investment contract itself.<sup>18</sup> Dessalegn defines global land grabbing as "the rush for commercial land in Africa and elsewhere by private and sovereign investors for the production and export of food crops as well as biofuels, in which the land deals involved stand to benefit the investors at the expense of host countries and their populations."<sup>19</sup>

Large-scale investment in African agricultural land by foreigners can bring opportunities and risks for African rural communities, the majority of whom are smallholder farmers. This sort of investment, if properly managed according to host countries' goals, could support agricultural development in host countries, for example, by creating employment opportunities and introducing new technology and know-how that boost productivity in the agricultural sector.<sup>20</sup> But such investment could also

13. WEISSLEDER, *supra* note 1, at 10-18.

14. This data does not include allocations below 1,000 hectares and pending land applications.

15. COTULA ET AL., *supra* note 10, at 41.

16. DESSALEGN RAHMATO, FORUM FOR SOC. STUDIES, LAND TO INVESTORS: LARGE-SCALE LAND TRANSFERS IN ETHIOPIA 12 (2011), *available at* [http://www.landgovernance.org/system/files/Ethiopia\\_Rahmato\\_FSS\\_0.pdf](http://www.landgovernance.org/system/files/Ethiopia_Rahmato_FSS_0.pdf).

17. GRAIN, *supra* note 2, at 1. "Land grabbing" is commonly used to describe the current upsurge in large-scale land deals, implying "accumulation of lands through illegal and/or illegitimate means." MICHAEL TAYLOR & TIM BENDING, INT'L LAND COALITION, INCREASING COMMERCIAL PRESSURE ON LAND: BUILDING A COORDINATED RESPONSE (2009).

18. SMALLER & MANN, *supra* note 6, at 3.

19. DESSALEGN, *supra* note 16, at 2.

20. S. HARALAMBOUS ET AL., INT'L FUND FOR AGRICULTURAL DEVELOPMENT [IFAD],

limit rural communities' access to agricultural land, displace them from the land on which they have built their livelihoods, expose them to food shortage problems, aggravate environmental problems through over-exploitation of land and water, and stimulate conflicts among rural communities.<sup>21</sup> Therefore, host countries should follow approaches that enable them to maximize the opportunities and minimize the risks this sort of investment can bring for rural communities. Public policies play a key role in this respect.<sup>22</sup>

### **III. Do Ethiopian Land Policy and Laws Protect Rural Communities from the Risks of Large-Scale Foreign Investment in Agriculture?**

The remaining part of this article will analyze whether the land policy and laws of Ethiopia can protect farmers from the risks of agricultural FDI. Before that, however, we will briefly discuss the Ethiopian land policy and relevant laws.

#### **A. General Overview of Ethiopian Land Policy and Laws**

At present in Ethiopia, land is exclusively owned by the state.<sup>23</sup> When it proclaimed the ownership of land by the state in 1995, the Constitution also prohibited the sale or exchange of land.<sup>24</sup> Thus, the Constitution entitles people, both citizens and noncitizens of Ethiopia, only to land use rights.<sup>25</sup>

Under the Constitution and the Rural Land Administration

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THE GROWING DEMAND FOR LAND: RISKS AND OPPORTUNITIES FOR SMALLHOLDER FARMERS 8-9 (2009), <http://www.ifad.org/events/gc/32/roundtables/2.pdf>.

21. *Id.* at 6-8.

22. *Id.* at 9.

23. The government has indicated that the continuation of state ownership is in the interest of the poor as it allows a free plot of land for anyone who wishes to farm. *See* KLAUS DEININGER ET AL., *TENURE SECURITY AND LAND-RELATED INVESTMENT: EVIDENCE FROM ETHIOPIA* 9 (2003).

24. CONSTITUTION, Art. 40(3) (1995) (Ethiopia).

25. The Constitution allows only the federal government to pass laws in relation to utilization and conservation of land resources, while the mandate to administer land is given to the regional states. These are responsible for drafting detailed laws that facilitate the implementation of federal laws on land utilization and conservation. However, recently, the mandate to allocate land parcels larger than 5,000 hectares was transferred from the regional states to the Federal Ministry of Agriculture and Rural Development by delegation. *See* CONSTITUTION, Arts. 51(5), 52(2)(d) (1995).

Proclamation, peasants<sup>26</sup> and pastoralists<sup>27</sup> are entitled to access private as well as communal<sup>28</sup> land for free.<sup>29</sup> After gaining access, peasants and pastoralists can exercise use rights over their land for an unlimited period of time.<sup>30</sup> They can also transfer their land use rights to family members, either by inheritance or in the form of donation.<sup>31</sup> Each holder of rural land is entitled to a land-holding certificate that indicates (among other things) the plot size, land use type and cover, level of fertility, and borders.<sup>32</sup> Those who are given holding certificates can lease their land to other farmers or investors for a period to be determined by the land administration and land use laws of the respective regional states.<sup>33</sup> Peasants and pastoralists have a right not to be displaced from their lands except when the government requires the land for a “public purpose.”<sup>34</sup> When farmers’ land is required for a public purpose, the government must give advance written notice to the farmers, indicating the time when the land must be vacated and the amount of compensation to be paid.<sup>35</sup> In such cases, farmers will be compensated for the developments they have made on the land and for property acquired, or will be given another piece of land in substitute.<sup>36</sup>

Private investors in general and foreign investors in particular may acquire land use rights in Ethiopia on the basis of legally allowed payment arrangements.<sup>37</sup> A foreign investor, as defined by the federal investment

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26. A “peasant” is “a member of a rural community who has been given [a] rural land holding right and the livelihood of his family and himself is based on the income from the land.” Rural Land Administration and Land Use Proc. No. 456/2005, FEDERAL NEGARIT GAZETA, art. 2(7) [hereinafter Land Use Proc.].

27. A “pastoralist” is “a member of a rural community that raises cattle by holding rangeland and moving from one place to the other, and the livelihood of himself and his family is based on mainly on [sic] the produce from cattle.” *Id.* art. 2(8).

28. Communal land is allotted “by the government to local residents for common grazing, forestry and other social services.” *Id.* art. 2(12).

29. CONSTITUTION, Art. 40(4-5) (1995).

30. Land Use Proc., *supra* note 26, art. 7(1).

31. *Id.* arts. 8(5), 5(2).

32. *Id.* art. 6(3).

33. *Id.* art. 8(1).

34. *Id.* arts. 40(4-5), 40(8).

35. Expropriation of Landholdings for Public Purposes and Payment of Compensation Proc. No. 455/2005, FEDERAL NEGARIT GAZETA, art. 4(1) [hereinafter Expropriation Proc.].

36. If farmers are dispossessed by the federal government, the rate of compensation will be determined based on federal law; when the dispossession is by regional governments, compensation will be based on regional laws. *Id.* art. 7(3).

37. CONSTITUTION, Art. 40(6), (1995); Land Use Proc., *supra* note 26, art. 5(4)(a). A foreign investor who wants to engage in the Ethiopian agricultural sector should first get an investment permit before seeking to obtain land. *See* Investment Proc. No. 280/2002,

law, includes “a foreign[er] or enterprise owned by foreign nationals, having invested foreign capital in Ethiopia.”<sup>38</sup> Foreign investors who acquire land can transfer their land use rights to family members by inheritance.<sup>39</sup> They can also present their land use rights as collateral, unlike the peasants, semi-pastoral and pastoral farmers.<sup>40</sup> Once they obtain land, investors have a right not to be displaced until their lease contract expires, even if the land is required for a public purpose, unless the land is required for development activities to be undertaken by government.<sup>41</sup> Investors can exercise the above rights so long as such exercise does not prejudice the land-holding rights of farmers or the land ownership rights of the state.<sup>42</sup>

From the brief discussion above, readers may conclude that farmers in Ethiopia are fully protected from the risks of agricultural FDI. However, a critical analysis of the policy and laws in the section below suggests the contrary.

### ***B. Critical Analysis***

At present, acquisition of agricultural land in Ethiopia is less difficult for foreign investors than for regular Ethiopians.<sup>43</sup> Since the government has allowed investors to easily obtain agricultural land, many foreigners now hold large-scale agricultural lands in different regions of the country, with many others in process.<sup>44</sup> The lands that are transferred to foreign investors are larger in size than the lands acquired by Ethiopian investors.<sup>45</sup> It is expected that, by 2013, 3 million hectares of land (equal to more than one fifth of the country’s land under cultivation currently) will be allocated to foreigners.<sup>46</sup>

At the same time, many Ethiopian peasants and semi-pastoralists have

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FEDERAL NEGARIT GAZETA, arts. 12-15.

38. Investment Proc., *supra* note 37, art. 6.

39. Land Use Proc., *supra* note 26, art. 8(5).

40. *Id.* art. 8(4).

41. Expropriation Proc., *supra* note 35, art. 3(2).

42. CONSTITUTION, Art. 40(6) (1995); Land Use Proc., *supra* note 26, art. 5(4)(a).

43. DESSALEGN, *supra* note 16, at 2.

44. *Id.* at 12.

45. *Id.*

46. Xan Rice, *Ethiopia – Country of the Silver Sickle – Offers Land Dirt Cheap to Farming Giants*, GUARDIAN, Jan. 15, 2010, available at [www.guardian.co.uk/world/2010/jan/15/ethiopia-sells-land-farming-giants](http://www.guardian.co.uk/world/2010/jan/15/ethiopia-sells-land-farming-giants).

only small plots of agricultural land, or none at all.<sup>47</sup> Research indicates that many young people in rural areas of the country work on farmlands of other people due to their inability to get access to farmland.<sup>48</sup> Inability to obtain farmland may also be a contributing factor for migration of people from rural to urban areas.<sup>49</sup>

Though Article 40(6) of the Constitution is capable, theoretically, of protecting Ethiopian farmers from the risk FDI poses to their access to land,<sup>50</sup> it has not been actually protecting them. Allocating large-scale agricultural lands to foreign investors before first satisfying Ethiopian farmers' demand for agricultural land is contrary to the above constitutional provision, as well as the provision of the Rural Land Administration Proclamation requiring the government to give land allocation priority to farmers over private investors, both foreign and domestic.<sup>51</sup> The concentration of lands acquired by investors in areas close to fresh water and markets is another indicator that priority is actually being given to foreign investors over local farmers.<sup>52</sup> Priority should be given to farmers in such areas, because the law requires it and because it is more difficult for smallholder farmers to get water from distant areas and transport their products to market.

In addition to these priority issues, some of the lands that have been allocated to foreign investors were previously being used by farmers.<sup>53</sup> In other words, farmers have been evicted from their land so that it can be

47. The majority of peasants and semipastoral farmers in Ethiopia produce agricultural products on small pieces of land. In the year 2000, for example, 87.4 percent of rural households cultivated lands of less than 2 hectares, 64.5 percent cultivated lands of less than 1 hectare, and 40.6 percent cultivated lands equal to or less than 0.5 hectare. SAMUEL GEBRESELAASSIE, *FUTURE AGRICULTURES, LAND, LAND POLICY AND SMALLHOLDER AGRICULTURE IN ETHIOPIA 1* (2006), [http://www.future-agricultures.org/pdf%20files/Briefing\\_land\\_policy\\_ethiopia.pdf](http://www.future-agricultures.org/pdf%20files/Briefing_land_policy_ethiopia.pdf).

48. FELEKE TADELE ET AL., *MIGRATION AND RURAL-URBAN LINKAGES IN ETHIOPIA: CASE STUDIES OF FIVE RURAL AND TWO URBAN SITES IN ADDIS ABABA, AMHARA, OROMIA AND SNNP REGIONS AND IMPLICATIONS FOR POLICY AND DEVELOPMENT PRACTICE* 29-42 (2006) available at [http://www.wed-ethiopia.org/docs/Migration\\_160606\\_nopics.pdf](http://www.wed-ethiopia.org/docs/Migration_160606_nopics.pdf).

49. *Id.*

50. The provision states, "Without prejudice to the right of Ethiopian Nations, Nationalities, and Peoples to the ownership of land, government shall ensure the right of private investors to the use of land on the basis of payment arrangements established by law. Particulars shall be determined by law." CONSTITUTION, Art. 40(6) (1995).

51. Land Use Proc., *supra* note 26, art. 5(4)(a).

52. COTULA ET AL., *supra* note 10, at 43-47. A study conducted by the Oakland Institute also indicates that Ethiopian lands leased by investors are located "near major water sources" and "adjacent to road networks." OAKLAND INSTITUTE, *UNDERSTANDING LAND INVESTMENT DEALS IN AFRICA: COUNTRY REPORT: ETHIOPIA* 26 (2011).

53. COTULA ET AL., *supra* note 10, at 60, 90. See also DESSALEGN, *supra* note 16, at 5; OAKLAND INSTITUTE, *supra* note 52, at 1.

allocated to foreign investors. The law giving farmers a right not to be displaced except when their land is required for a public purpose cannot prevent these evictions, because the government defines “public purpose” broadly to include the engagement of foreign investors in agricultural activity.<sup>54</sup> The law also allows concerned government organs to use police to evict farmers who refuse to hand over their lands.<sup>55</sup> Furthermore, the absence of legal grounds to oppose land expropriations that are not in the interest of the public has provided space to arbitrarily expropriate farmers’ lands without any fear of legal action.

Though the government states that the lands allocated to foreign investors are “unused,” this claim is belied by the smallness of the farm plots of more than 85 percent of rural households, as well as the existence of many landless people in the rural areas of different regional states. The small size of lands cultivated by the majority of Ethiopian farmers is one of the factors contributing to low agricultural productivity and food shortages in the country.<sup>56</sup> The average farm size in Ethiopia generates only about 50 percent of the minimum income required for an average farm household to lead a life out of poverty.<sup>57</sup> If “unused” lands are available in the country, why not distribute them to the country’s citizens who have no or little land and are dependent on foreign aid for their food?<sup>58</sup> Even if unused land is available in the country, the allocation of large-scale agricultural land to foreign investors may still displace local farmers, since investors’ demand for land focuses on “higher value lands”<sup>59</sup> which are most likely being used by local farmers.<sup>60</sup>

The land policy and laws of Ethiopia, as they exist now, do not

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54. “‘Public purpose’ means the use of [land] defined as such by the decision of the appropriate body in conformity with [an] urban structure plan or development plan in order to ensure the interest of the peoples to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development.” Expropriation of Landholdings for Public Purposes and Payment of Compensation Proc. No. 455/2005, FEDERAL NEGARIT GAZETA, art. 2(5).

55. *Id.* art. 4(5).

56. This is because it is difficult to employ advanced agricultural methods that enhance productivity on small-sized farm plots.

57. SAMUEL, *supra* note 47.

58. More than 45% of the Ethiopian population is food insecure. See FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA FOOD SECURITY COORDINATION BUREAU, FOOD SECURITY PROGRAMME: MONITORING AND EVALUATION PLAN i (2004), available at [www.worldbank.org/afr/padi/M%26E\\_Plan.pdf](http://www.worldbank.org/afr/padi/M%26E_Plan.pdf).

59. “Higher value lands” include “those with greater irrigation potential or proximity to markets.” LORENZO COTULA & SONJA VERMEULEN, INTERNATIONAL INSTITUTE FOR ENVIRONMENT AND DEVELOPMENT, “LAND GRABS” IN AFRICA: CAN THE DEALS WORK FOR DEVELOPMENT? 2 (2009), <http://pubs.iied.org/pdfs/17069IIED.pdf>.

60. COTULA ET AL., *supra* note 10, at 62.



provide adequate protection to smallholder farmers from the biggest danger of agricultural FDI: displacing rural communities from the land on which they have built their livelihoods. The discussion above also shows that this sort of investment is being promoted while citizens' access to agricultural land is limited and farmers are being displaced from their lands. This has various impacts on the displaced farmers and their families, other smallholder farmers, and the food security and independence of the country.

#### 1. Impact on Displaced Farmers and Their Families

As indicated above, the allocation of large-scale land to foreign investors may displace farmers from the lands on which they and their families depend for food and income. This can cause impoverishment and hunger for the farmers and their families. As food prices escalate, the compensation they obtain from the government may not be enough to enable them to buy sufficient food.<sup>61</sup> In regions where land-holding certificates have not been issued, farmers who have been evicted from their lands have faced difficulties in obtaining any compensation.<sup>62</sup> The loss of land also prevents traditional forms of land use for subsistence purposes, such as grazing animals and gathering fuel wood and medicinal plants.<sup>63</sup> Loss of land may force farmers to break the long-term social and historical attachments they have with the land.<sup>64</sup>

Ethiopian law does not provide farmers who are evicted from their private lands adequate compensation for all the harms they may suffer as the result of their displacement. Such farmers will be compensated only for the "permanent improvements" they have made on the land, the property situated on the land, and the income they would have generated had they not been displaced.<sup>65</sup> The amount of compensation for the latter is equal to ten times the average annual income the farmers earned during the five years before the expropriation.<sup>66</sup> Subject to the availability of lands, the government may also give substitute land (along with a smaller amount of money) to the farmers.<sup>67</sup> This could go against the farmers' interests, as the law says nothing about the location of the land to be given as a substitute.

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61. Many holders whose land has been alienated have complained that the compensation has been unfair and inadequate. See DESSALEGN, *supra* note 16, at 6.

62. See OAKLAND INSTITUTE, *supra* note 52, at 1.

63. See COTULA & VERMEULEN, *supra* note 59.

64. COTULA ET AL., *supra* note 10, at 90; OAKLAND INSTITUTE, *supra* note 52, at 38.

65. Expropriation of Landholdings for Public Purposes and Payment of Compensation Proc. No. 455/2005, FEDERAL NEGARIT GAZETA, arts. 7(1), 8(1).

66. *Id.* art. 8(1).

67. *Id.* art. 8(3).

In the absence of such specifications, the farmers might end up receiving land in a remote area where infrastructure is poor and/or public services are absent. The law does not provide any compensation to farmers from whom the right to use communal land is taken away and given to foreign investors.

Displaced farmers cannot buy farmland, as land cannot be sold or bought in Ethiopia, and job opportunities in the country are few, especially for farmers, the majority of whom are illiterate. Thus, after being displaced from their lands, farmers may have no choice other than to look for jobs on the farms of foreign investors to whom their land has been given. The absence of better alternative for farmers may allow investors to exploit the farmers' labor for low wages, as Ethiopia lacks labor legislation that is specifically designed to regulate employment relationship in agriculture businesses. Currently, the labor law of the country, Proclamation 377/2003, is being applied to govern the employment relationship between foreign investors in agriculture and their employees. However, the activities, environment, and working conditions of farm employees necessitate the promulgation of separate legislation to regulate employment relationships in agriculture.

## 2. Impact on Other Farmers

Foreigners' production of agricultural products that are also produced by Ethiopian smallholder farmers is sometimes disadvantageous for the latter. For example, Chinese investors recently acquired land in Ethiopia for the purpose of producing sesame.<sup>68</sup> The Chinese investors' production of sesame could decrease the need for Ethiopian sesame in China, especially if the investors can produce enough to fully or partially satisfy China's needs. This is especially disadvantageous for smallholder farmers, because it is likely to push the price of Ethiopian sesame down.<sup>69</sup>

## 3. Impact on Food Security and National Sovereignty

Allocating land to foreign investors in a country dependent on foreign aid for food (and with a growing population)<sup>70</sup> might aggravate food shortage problems by decreasing the number of farmers producing food for domestic consumption. The production of food by foreign investors in Ethiopia does not guarantee the availability of food in the country's

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68. GENET MERSHA, INTERNATIONAL AGRICULTURAL LAND DEALS AWARD ETHIOPIAN VIRGIN LANDS TO FOREIGN COMPANIES 12-13 (2009), *available at* <http://farmlandgrab.org/6843>.

69. *Id.*

70. The population of Ethiopia is expected to increase by more than 2 percent every year through 2025. U.N. DEP'T OF ECON. AND SOC. AFFAIRS, POPULATION DIV., WORLD URBANIZATION PROSPECTS: THE 2007 REVISION (HIGHLIGHTS) 135 (2007).

markets, because foreign companies are producing food either to ensure food security in their respective home countries or to generate high profits by exporting their products to different countries. To further aggravate the food security problem that might arise with the allocation of smallholder farmers' land to foreign investors, the investment law of Ethiopia encourages foreign investors to export the maximum possible amount of agricultural products produced in Ethiopia.<sup>71</sup> If more and more lands are allocated to foreign investors, it could become difficult for the majority of the poor to feed themselves, as food will not be available to them for an affordable price, and the country could become dependent on foreign investors for food.

Adding to this problem, most of the planned investment projects are not operational. The great majority of investors who have obtained Ethiopian land have held the land idle. For example, one report indicates that only 5 percent of the lease areas awarded in the Benishangul region are currently being developed.<sup>72</sup>

#### IV. Conclusion and Recommendations

The laws of Ethiopia, as they exist now, cannot safeguard farmers from losing their land. The constitutional provision ordering land allocation to investors to be made in a manner that does not limit rural communities' access to farmland is not being observed. The amount of compensation provided under the law for displaced farmers is not adequate, and displaced farmers without land-holding certificates are facing difficulties obtaining compensation (at least until the government verifies that they were holding the land previously). Furthermore, farmers are not getting compensation for the communal land expropriated from them. Though the food shortage problem in the country is not yet solved, the investment law encourages investors to export the maximum possible amount of their agricultural products. There are no strong laws to force investors to begin their operations in a reasonably short period of time; hence, lands which could otherwise have been cultivated are left idle, worsening the food shortage.

An investment that risks the livelihoods of rural farmers, who account for more than 80 percent of the rural households of Ethiopia, would bring more harm than benefit to the country's people. In a period when

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71. See Council of Ministers Regulations on Investment Incentives and Investment Areas Reserved for Domestic Investors Reg. No. 84/2003, FEDERAL NEGARIT GAZETA, art. 4.

72. See OAKLAND INSTITUTE, *supra* note 52, at 19.

governments of many countries are demanding farmlands overseas to meet the food needs of their citizens, the least Ethiopia can do for its poor citizens is to let them use the farmland available in their own country without fear of losing it. For these reasons, this article recommends the following:

- 1) Article 40 of the Constitution should be taken into consideration when allocating land to investors. The government should satisfy citizens' demand for rural farmland before allocating land to foreign investors. Lands close to water sources and markets should be allocated to smallholder farmers before investors, as the latter are in a better position to find water sources and transport their products to market.
- 2) Article 2(5) of the Expropriation of Landholdings Proclamation (No. 455/2005) should be amended to redefine "public purpose" in a way that does not include expropriation of land for the purpose of allocating it to agricultural investors.
- 3) Strong legal measures and continuous follow-up mechanisms should be in place to force investors to begin operations in the shortest possible period of time after receiving land from the government.
- 4) Article 4 of the Investment Incentives Regulation (No. 84/2003), encouraging investors to export the maximum possible agricultural products, should be reviewed; investors should be given incentives to contribute to the reduction or elimination of food shortages by making their products available in local markets for a reasonable price.
- 5) Laws that specifically regulate employment relationships in agricultural businesses should be enacted.
- 6) Land-holding certificates should be issued to peasants and pastoralists who have not yet received them.